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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/612,102

07/01/2003

Israel Dvoretzky

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3443

27106

7590

07/02/2004

MELVIN I. STOLTZ, ESQ.  
51 CHERRY STREET  
MILFORD, CT 06460

EXAMINER

ROLLINS, ROSILAND STACIE

ART UNIT

PAPER NUMBER

3739

DATE MAILED: 07/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/612,102

Applicant(s)

DVORETZKY ET AL.

Examiner

Rosiland S Rollins

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 01 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-38 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-38 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

### ***Claim Rejections - 35 USC § 101***

Claims 1-38 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The claims recite "a heat delivery patch or exothermic pad positioned on the desired site of the human body"; Applicant is reminded that the human body is non-statutory subject matter.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 14, 16, 17 and 23-26 are rejected under 35 U.S.C. 102(b) as being anticipated by Dvoretzky et al. Dvoretzky et al. teach a treatment system including a foamed (see claim 3) thermoplastic holding and supporting member (21) for being secured to a part of the human body and a heat delivery patch (22) cooperating with the holding and supporting member to apply heat therapy and a systemic or topical medication to a desired site on the body. The holding and supporting member has an elongated, planar construction with hook and loop fasteners for securing it to the body

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(figure 1). Also, the device may include skin-enhancing agents such as solvents like salicylic acid and lactic acid that will benefit from the heat gradient (col. 5 lines 5-10).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4, 5, 7, 10, 12, 13 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dvoretzky et al '021.

Dvoretzky et al teach all of the limitations of the claims except for the type of medication. Dvoretzky et al discloses the use of medication to enable deeper heat penetration. Therefore, it would have been obvious to one having ordinary skill in the art to select the particular medications as claimed as a mere design choice based on their suitability for the intended use.

Claims 18-22, 27 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dvoretzky et al '021 in view of Last (US 4905998).

Dvoretzky et al. teach all of the limitations of the claims except the device being shaped as a hollow cylinder with an elongated strap. Dvoretzky et al teach a treatment system including a foam thermoplastic holding and supporting member (21) that can surround and be secured to the arms, legs, wrists. or ankles and a heat-delivering patch (22) cooperating with the holding and supporting member to apply heat therapy and a systemic or topical medication to a desired site on the body. The holding and

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supporting members has an elongated, planar construction with hook and loop fasteners for securing it to the body (figure 1). Also, the device of Dvoretzky et al. may include skin enhancing agents such as solvents like salicylic acid and lactic acid that will benefit from the heat gradient (col. 5 lines 5-10. Last teaches a holding and supporting member with a heat-retaining pad (22). The device has a cylindrical shape and is adapted to securely surround a particular part of the human anatomy including the elbow (figure 3). The device also contains a strap member (26) that enables tightening of the device in a desired location. It would have been obvious to one of ordinary skill in the art at the time of invention that the device of Dvoretzky et al. could have been modified to the shape and structure of the device of Last as a suitable construction for securely fastening the device around a body part to be treated.

Claims 29-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dvoretzky et al. '021 in view of Last '998 and further. The combined device of Dvoretzky et al. and Last teaches all of the limitations of the claims except for the use of the particular medications with the device. Dvoretzky et al. discloses the use of medication to enable deeper heat penetration. Therefore, it would have been obvious to one having ordinary skill in the art to select the particular medications as claimed as a mere design choice based on their suitability for the intended use.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rosiland S Rollins whose telephone number is 703/3082711. The examiner can normally be reached on Mon.-Fri. 9:00 AM - 6:00 PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda C. Dvorak can be reached on 703/3080994. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Rosiland S Rollins  
Primary Examiner  
Art Unit 3739

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